

General Purchasing Conditions 2/11
EISENMANN Anlagenbau GmbH & Co. KG,
EISENMANN Service GmbH & Co. KG, EISENMANN SE

A. Effective contracts, scope of application

1. Our orders are governed exclusively by the general terms and conditions of purchase ("GTC") below, including where no express reference is made to them in connection with ongoing business relations. We herewith object to any changes or amendments of these GTC, especially to any diverging or additional supplier terms and conditions of business. Any silence on our part upon order confirmations referring to diverging or additional terms and conditions of business shall not be construed as an implied acceptance. We shall not acknowledge any such terms and conditions of business even if our order is executed. In executing the order the supplier accepts our GTC. Any changes or amendments of our GTC in an order confirmation will be deemed a rejection of our order. Par. 3 2nd sentence shall apply mutatis mutandis. If the delivery or service is nevertheless rendered, this will be deemed an acceptance of our GTC.
2. Only our purchasing department is authorised to contract and to order modified or additional services incurring additional costs. This shall not include modified or additional services up to an additional cost of EUR 500 in each case, which may be ordered by our project managers and construction site coordinators.
3. All orders shall be confirmed without delay by the supplier using the "order acceptance" form. We reserve the right to cancel any orders at no charge for which we do not receive a confirmation within 8 working days or which are modified in the order confirmation.

B. Scope of delivery and services

1. Any and all services required for a proper delivery and/or proper manufacturing and assembly process shall be included in the supplier's scope of delivery and services even where not expressly specified in the contract.
2. Where we supply or provide any material necessary for the supplier to render any installation and assembly work, the supplier's services shall also include unloading the transportation means and shipping the material from its storage location to the assembly site.
3. Any delivery of machinery and components, installation, maintenance and assembly work shall include the customary documentation in electronic format and as hard copy. The documentation shall comply with the state of the art and the applicable standards and legal requirements at the time of delivery (in particular but without limitation the EC Machinery Directive, where applicable). The rules, standards and legal requirements applicable in Germany shall prevail and, where they provide for stricter requirements, those applicable at the designated delivery/service location and/or the designated final destination of our delivery/services to the customer shall prevail.
4. Where an assignment includes research, design, development, drafting or similar work, the supplier shall be obliged to hand over all work results, especially design and production drawings as well as documentation, user manuals, etc., in each case in electronic format and as hard copy.
5. Software shall be delivered on customary storage media in machine-readable object code including application documentation, in electronic format and as hard copy. The development of any software shall include the delivery of the software on customary storage media in machine-readable source code and the software development documentation in electronic format and as hard copy as well as manufacturer documentation; this shall apply also to any subsequent modifications and/or updates. The source code shall be delivered in unabbreviated programming language including detailed comments. The comments shall be drafted in the designated national language. Any terminology specified by us or by the customer shall be used. The source and object code as well as the documentation shall be handed over upon acceptance and shall comply with the release applicable at the time of acceptance. Where any software is subsequently adjusted or updated, the source and object code as well as the documentation including references to the changes shall be automatically delivered. The source and object codes as applicable from time to time may be requested at all times.
6. The supplier shall review our plans, drawings and other specifications regarding the execution of the work, or any materials and components supplied by us or services of other suppliers, as far as they concern him, for completeness, accuracy and fitness for the designated purpose. The supplier shall immediately inform us in writing of any concerns he may have. If he fails to do so we will be entitled to warranty claims in this respect as well; nothing in this shall prejudice any claims for damages based on other grounds. Any release by us of technical records of the supplier in connection with the execution of an order shall not release the supplier from his obligation to render defect-free delivery and services.

C. Remuneration

1. The agreed prices are fixed prices, DDP designated place of delivery. Failing any agreement our registered office Böblingen shall be the place of delivery.

2. The supplier shall give notice of any remuneration claim as may arise for modified or additional services, on whichever legal ground, prior to their execution. No such notice may be required in particular cases based on good faith, for example where the remuneration claim is obvious or in cases of urgency. Failure by the supplier to give advance notice of his remuneration claim although no exception according to the 2nd sentence of this paragraph applies will cause the remuneration claim to lapse. For a remuneration claim in the event of modified or additional services, additional and reduced services shall be considered equally.

D. Deadlines, contractual penalty

1. Any deadlines indicated on our order or otherwise agreed are deadlines for the receipt of deliveries/work results and are binding. Partial deliveries/services are subject to our consent.
2. The supplier shall inform us without delay in writing of any foreseeable noncompliance with an agreed deadline, its causes and the anticipated duration of the delay.
3. Where, before or after the due date, doubts arise as to the supplier's ability or willingness to perform, for reasons within the supplier's control, especially because the supplier fails to observe time schedules or to provide sufficient staff, or he announces that he is not able or willing to perform in due time, and if we have an urgent legitimate interest in having the issue clarified, we may set the supplier a time limit, before or after the due date, to explain himself and possibly prove his ability or willingness to perform. If the time limit expires without results we may withdraw from the contract in accordance with Sec. 323 BGB and/or claim damages or damages instead of performance in accordance with Sec. 280, 281 BGB. Nothing in this shall prejudice any further claims and rights.
4. If the supplier is in default we may, without prejudice to any further claims for damages and unless agreed otherwise, claim a contractual penalty in the amount of 1% of the order value per full week of the delay (and otherwise on a prorated basis), but no more than 5% of the order value. We may reserve the right to a contractual penalty under Sec. 341 (3) BGB until the final payment has been made on the underlying contract, but at least for 14 days after the acceptance of the delivery/work results.

E. Deliveries, passing of risk, force majeure

1. Each shipment shall include a delivery note and each package shall include a contents list, stating our order number and items. The delivery note and the contents list must state the quantity and include a clear specification of the parts delivered. The specification must be affixed to the deliverables for identification purposes as well. Where a package only includes identical parts, it shall be sufficient to state the specification on the package. For direct shipments to our customers a neutral delivery note shall be used, stating the EISENMANN order number and the fact that the delivery is made on behalf of EISENMANN. A dispatch note signed by the forwarder shall be transmitted to us for billing control purposes.
2. In the case of a purchase contract the risk shall pass to us upon handover of the deliverable at the designated place of delivery, and upon acceptance in the case of contracts for work and services.
3. Any labour disputes, governmental interventions, operational breakdowns, material sourcing or energy supply problems or other unforeseeable, exceptional and unavoidable circumstances which occur through no fault of our own, whether they affect us or a third party (e.g. a customer), will release us from the duty to accept the delivery/work results for the duration of such circumstances. We shall advise the supplier without delay of the occurrence and anticipated duration of any such circumstances. Where as a result of such circumstances it becomes impossible or economically unreasonable for us to fulfil the contract, we may terminate the contract for cause. The supplier's claims in respect of any services rendered up to the notice of termination are governed by Sec. 645 (1) 1st sentence BGB; no further claims will be accepted. Our statutory rights remain unaffected.

F. Invoicing, payment terms

1. The invoice shall be transmitted to us as single copy upon dispatch. It has to include all order details and may not be enclosed with the shipment under any circumstances. Partial invoicing will be accepted in connection with orders of partial deliveries.
2. Unless agreed otherwise payment will be made after 14 days at a 3% cash discount or after 60 days net. The payment period commences upon receipt of the invoice and all necessary documents but at the earliest upon acceptance of the delivery and/or work results, and not before the receipt of any agreed security. Payment shall be deemed effected upon handover of the cheque to the postal services provider and/or receipt of the transfer order by our bank.
3. In the event of any defects we may withhold a reasonable portion of the payment and deduct a cash discount also after the expiry of right to refuse performance according to paragraph 2.
4. Down payments and payment by instalments shall be subject to a separate agreement and shall be secured by the supplier beforehand by way of an unlimited absolute bank guarantee. Any such guarantee shall be subject to German law and indicate Stuttgart as exclusive place of jurisdiction. In all other respects Sec. 239 BGB shall apply.

G. Defects, inspection

1. Except where the order provides for further or different requirements, all deliveries and services shall be rendered in accordance with the acknowledged state of the art and in compliance with applicable DIN, VDE, VDI or equivalent standards. In addition, they shall be rendered in compliance with any legal provisions concerning machinery, technical equipment, accident prevention, safety at work, hazardous materials, emission control, water pollution control, waste management etc. The rules, standards and legal requirements applicable in Germany shall prevail and, where they provide for stricter requirements, those applicable at the designated delivery/service location and/or the designated final destination of our delivery/services to the customer shall prevail. The requirement of absence of defects in title shall extend also to the final destination specified by us.
2. Where we demand subsequent performance, we may choose the type of subsequent performance also in the case of contracts for work and services. The expenditure required for purposes of subsequent performance, which shall be borne by the supplier, also includes the costs of disassembling/assembling the deliverables as well as shipping and packaging costs. We shall have the right of self-remedy also in the case of purchase contracts.
3. The limitation period shall be at least 36 months unless a longer period is required by law or other contractual agreement. A written notification of defects will suspend the limitation of our warranty claims until either party refuses to conduct or continue negotiations.
4. The period for inspection and notification of defects (Sec. 377, 381 (2) HGB) shall be three weeks from delivery, and three weeks from discovery of the defect for defects not detectable upon inspection. Where a longer period is appropriate in the particular case, it shall be applicable. We may limit our incoming goods inspection to quantity deviations and easily visible defects.
5. We may inspect the manufacturing facilities of the supplier and his sub-suppliers during normal business hours (including together with our customer).
6. To secure our warranty claims we may require the supplier to provide security in the amount of 5% of the remuneration owed. Should the supplier become insolvent before the final payment is made we may (without prejudice to any further rights we may be entitled to) claim an additional security of a further 10% of the remuneration owed (i.e., a total of 15%). Security may be provided by withholding payment or by way of an unlimited absolute bank guarantee. Any such guarantee shall be governed by part F par. 4. Where the security has not been realised it shall be returned upon expiry of the limitation period for warranty claims as agreed for the contract. Where, by that time, any of our asserted warranty claims are not yet settled or any warranty claims for parts of the delivery or services are not yet time-barred, a proportionate share of the security may be withheld.

H. Manufacturer's liability, insurance

1. Where recourse is taken against us on the basis of any manufacturer liability under German or foreign law, the supplier shall be obliged to indemnify us against third party claims for damages to the extent the supplier is responsible for the cause of the liability. Within the same limits the supplier shall also be obliged to reimburse any expenditures as are incurred as a result of or in connection with reasonable product recalls initiated by us or any other reasonable measures to remedy or prevent damage. The supplier waives the defence of the limitation of claims except where we are entitled to ourselves plead limitation of claims towards the claimant.
2. For the duration of the delivery and services the supplier shall maintain a business and product liability insurance providing for a minimum indemnity limit of EUR 10 million per case of personal injury/property damage. Nothing in this shall affect our claims for damages. Where applicable the supplier further shall effect an erection all risks insurance providing for an insurance sum which covers the value of the deliveries and services to be rendered by the supplier.

I. Assignment of claims, subcontracting

1. Any assignment of trade accounts receivable to third parties shall be subject to our written consent.
2. The supplier shall fulfil his obligations under contracts in place with us through his own business and his own employees. Any subcontracting of obligations shall be subject to our prior written consent.

J. Provision of material

1. Any material and parts provided by us shall remain our property and must be stored separately by the supplier and used only for our orders. The supplier shall be liable for any damage or loss, whether he is at fault or not.
2. Any processing or modification by the supplier shall be undertaken on our behalf. Where the material provided by us is processed jointly with other material not owned by us, we will acquire joint ownership of the resulting product in accordance with the value of the material provided by us, relative to the value of the other materials at the time of processing.

3. Where the material provided by us is joined with other material not owned by us, we will acquire joint ownership of the resulting product in accordance with the value of the material provided by us, relative to the value of the other materials at the time of joining. If the materials are joined such that the supplier's material is the principal end product, then the supplier shall assign a proportionate joint ownership share to us; the supplier will safeguard the joint ownership share on our behalf. The above provisions shall apply mutatis mutandis where the supplier combines or blends the material provided by us with other materials.
4. The supplier will insure the product owned exclusively or jointly by us, including any new products resulting from the processing, against property damage, loss, etc.

K. Confidentiality, property rights, rights of use

1. The supplier shall keep confidential and not exploit for his own purposes, any information made available to him or knowledge obtained by him in the course of executing any order, including after the completion of the order. This shall also apply to the work results specified in part B par. 4 hereof, and to the software developed for us in accordance with part B par. 5. Any publications concerning us or our products shall be subject to our written consent.
2. All material provided to the supplier, in particular but not limited to models, tools, designs, drawings, plans and records of any kind, shall remain our property. The supplier shall keep such material confidential and return it to us at any time on request, at no charge. The supplier may not make such material available to third parties for viewing or otherwise, reproduce it, or use it for any purposes of his own.
3. The same shall apply to moulds, tools or similar devices or appliances for manufacturing the deliverables to be manufactured on the basis of such records or fully or partly at our expense. Any modifications to the above shall be subject to our consent. The aforementioned material shall become our property (where a remuneration has been agreed, upon payment of such remuneration) and will be properly stored for us at no charge. Where we have paid for any such material prior to completion, we shall acquire the ownership of the semi-finished product in accordance with the provisions above.
4. The supplier shall insure the material owned by us as specified in par. 2 and 3 above against property damage, loss, etc.
5. In cases of part 4 par. 4 and in the case of software developed for us according to part B par. 5, we shall have the exclusive right with no limit as to time or territory, to use the work results and/or the software in any way. Where applicable we shall be entitled to file for intellectual property rights. Where the supplier uses standard software for his deliveries and services, we shall have the nonexclusive right with no limit as to time or territory to use such software at least to the extent permitted by law. In particular, we shall have the right to use such software without restriction to individual systems and to grant our customers a nonexclusive right of use therein.
6. Where any improvement is accomplished by the supplier in connection with an order, we shall have a free, nonexclusive right to commercially exploit such improvement and any related intellectual property rights.

L. Code of conduct, accident prevention and safety regulations

1. The supplier shall comply with the laws and regulations of all countries in which he acts. In particular, he shall not engage in any bribery or violation of human rights, be it actively or passively, directly or indirectly. The supplier is responsible for the health and safety of his employees and for the protection of the environment. The supplier shall use best efforts to encourage and require his suppliers to comply with this code of conduct as well.
2. Where any installation or assembly work is carried out at our customer's construction site or at our premises, the supplier will be responsible for the compliance with all accident prevention regulations and any factory regulations of the customer or other requirements communicated to him. In particular, the supplier shall comply with the "Safety Manual for External Companies and Visitors" as applicable from time to time, available at www.eisenmann.de/supplierdownloads. The supplier is obliged to acquaint himself with the content of any regulations communicated to him.

M. Foreign trade regulations, restricted substances, declaration

1. In his quotes and together with his confirmation according to part A par. 3 the supplier shall provide the following information: (1) Requirement of an export license for the deliverables, (2) list item number according to German export laws, (3) registration of deliverables under US law by list item number, (4) requirement of an export license for the deliverables under the applicable EC Dual Use Regulation including list item number, (5) statistical product number, and (6) country of origin of the goods. Should any necessary export license be refused to us, we reserve the right to withdraw from the contract; nothing in this shall affect any further claims.
2. The supplier shall submit evidence of the origin/provenance of the deliverables in compliance with the applicable requirements, e.g. by a supplier or origin declaration or EUR 1. In the supplier declaration the supplier shall state the origin of the deliverables in accordance with applicable origin rules of the country of destination.

3. The supplier shall comply with any substance restrictions under the laws of Germany or of the country of destination communicated to the supplier.
4. The supplier shall declare the substances contained in the deliverables (stating the CAS numbers and weight contents in the homogenous material) where such substances are specified in any of the following regulations: (1) restricted chemicals regulation (implementation of the Directive 76/779/EEC and related amendments), (2) end of life vehicles regulation (implementation of the Directive 2000/53/EC), (3) electrical and electronic equipment act (implementation of the Directives 2002/95/EC and 2002/96/EC), (4) regulation restricting the use of CFC and halons (implementation of the Regulation (EC) 2037/2000), and (5) ceramic fibres regulation (in preparation).

N. Termination

1. We are entitled to a right of termination in analogy to Sec. 649 BGB also in respect of purchase contracts. Any termination under Sec. 649 BGB (by analogous application in the case of purchase contracts) may be restricted to individual parts of the contract by us.
2. We may terminate the contract for cause if the supplier experiences financial difficulties, especially where an insolvency petition has been filed against the supplier's assets. The supplier's remuneration will be calculated in accordance with Sec. 654 (1) 1st sentence BGB. Nothing in this shall prejudice our claims for damages and other rights.

O. Place of performance, place of jurisdiction, governing law

1. The place of performance shall be the place to which the deliverables shall be delivered as per the order or where the work shall be rendered as per the assignment. Failing any agreement, the place of performance shall be our registered office at 71032 Böblingen.
2. The courts of jurisdiction for our registered office at 71032 Böblingen shall be the exclusive place of jurisdiction where our suppliers are businesses or legal persons under public law or have no general place of jurisdiction in Germany. However, we may also file claims at any other legal place of jurisdiction.
3. The contractual relationship shall be governed by the laws of Germany to the exclusion of the UN Sales Convention. Contracts concerning the delivery of non-fungible movable objects to be manufactured or produced shall be governed by the provisions of the BGB relating to contracts for work and services.